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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

| | |
|------------------------------|---|
| 12 K.A. | Case No. 2:24-cv-04786-WLH-ADS |
| 13 v. | REPLY IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS MINDGEEK S.À R.L., MG FREESITES LTD, MG PREMIUM LTD, MINDGEEK USA INCORPORATED, MG GLOBAL ENTERTAINMENT INC, AND 9219-1568 QUEBEC INC. |
| 14 MINDGEEK S.À R.L, et al., | [REDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL] |
| 15 Defendants. | Hearing Date: January 31, 2025 Hearing Time: 1:30 p.m. Courtroom: 9B Judge: Hon. Wesley L. Hsu |
| 16 | Complaint Filed: June 7, 2024 Trial Date: None Set |
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ARGUMENT

I. PLAINTIFFS HAVE NOT SUFFICIENTLY PLED BENEFICIARY LIABILITY UNDER THE TVPRA

As set forth in MindGeek’s Opening Brief here and in its Reply in support of its motion to dismiss in the *Fleites* action, to establish beneficiary liability under the Trafficking Victims Protection Act (“TVPRA”), Plaintiffs must plead that MindGeek “knowingly . . . benefit[ted], financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of [18 U.S.C. § 1591(a)(1)],” *i.e.*, a sex trafficking act. 18 U.S.C. § 1591(a)(2). As in *Fleites*, Plaintiffs have failed to sufficiently allege MindGeek’s knowing participation in a venture engaged in sex trafficking, and thus the beneficiary-liability claims must be dismissed.

A. Plaintiffs Fail to Allege that MindGeek Is a Participant in a Trafficking Venture.

Having been alerted by MindGeek’s Reply in the *Fleites* action to a threshold failure in their pleading—that alleging participation in a venture does not adequately plead participation in a venture “*which . . . has engaged in an act of sex trafficking*” as required to establish beneficiary liability under the TVPRA, 18 U.S.C. § 1591(a)(2); *G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 548 (7th Cir. 2023)—Plaintiffs’ Opposition belatedly offers two sentences claiming that “MindGeek’s creation, hosting, and monetization of CSAM depicting Plaintiffs are commercial sex acts under the TVPRA.” Opp. 12. But this is not enough to save their fundamentally deficient theory. Untethered as they are to *any* specified facts from, or even a citation to, their Complaints, these conclusory sentences cannot magically transform MindGeek’s participation in a legal venture into one that has engaged in an act of sex trafficking. This Court therefore should not credit the tactic.

With that gambit exposed, Plaintiffs are left to echo versions of the same arguments advanced in *Fleites*: that how MindGeek operates its business and makes

1 its money, which Plaintiffs pejoratively characterize at length, Opp. 10-12, 14, is
2 sufficient conduct to make it liable. But behind their repetition of inflammatory
3 language about the allegedly “illicit” nature of MindGeek’s business, *see, e.g.*, Opp.
4 14, the heart of what Plaintiffs describe of MindGeek’s own conduct is a *legal*
5 business engaged in *legal* activities. To this end, the Ninth Circuit’s *Reddit* case,
6 which Plaintiffs wrongly attempt to discard as somehow irrelevant because it focused
7 on a more limited issue on appeal, Opp. 13, continues to be instructive. While
8 speaking in the context of the FOSTA exception to section 230 immunity, the *Reddit*
9 panel expressly assessed the civil beneficiary-liability portion of the TVPRA, making
10 Plaintiffs’ contention that *Reddit* “did not extend [its] standard to the civil analog
11 statute outside the FOSTA exception” simply incorrect. Opp. 13. Indeed, the *Reddit*
12 panel specifically cited Section 1595 to hold that, “[i]n a sex trafficking beneficiary
13 suit against a defendant-website, the most important component is the defendant-
14 website’s own conduct—its ‘participation in the venture.’ *See* 18 U.S.C. § 1595(a).”
15 *Does v. Reddit, Inc.*, 51 F.4th 1137, 1142 (9th Cir. 2022) (noting that “the ‘gravamen’
16 of a section 1595 beneficiary claim is the defendant’s participation in and benefit
17 from the trafficking scheme,” and therefore that, the key conduct for establishing
18 liability is that of the defendant-website itself).

19 As MindGeek outlined in its opening papers, the facts alleged by Plaintiffs in
20 these cases are no more indicative of MindGeek having participated in a venture
21 engaged in trafficking than the facts alleged in *Reddit*, which the Ninth Circuit held
22 insufficient for beneficiary liability. Mot. 11-13. As in *Reddit*, Plaintiffs allege, in
23 effect: that MindGeek’s moderation practices allowed CSAM to be uploaded to its
24 sites; that MindGeek provided tools that helped users maximize traffic to their
25 videos; that it did not act quickly enough to remove reported videos; and that it
26 “earned revenue from ads it placed alongside Plaintiff’s images.” Opp. 10-11, 13-14;
27 *see also, e.g.*, K.A. Compl. ¶¶ 39, 59-61, 91, 121. These allegations might be
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1 unflattering, but as was the case in *Reddit*, none of this conduct—even if assumed to
2 be true—can establish MindGeek’s participation in trafficking.¹

3 Put simply, and dispositively, Plaintiffs cannot point to *any* allegation of fact
4 in any of the Complaints that evinces MindGeek’s participation in the *creation* of the
5 allegedly trafficked content. At best, as shown in the *Fleites* papers and MindGeek’s
6 Opening Brief here, Plaintiffs have alleged trafficking by some of MindGeek’s users
7 (including Plaintiffs’ individual traffickers), but the conduct of those individuals
8 cannot as a matter of law be imputed to MindGeek to automatically transform
9 MindGeek’s lawful business into a venture engaged in trafficking. *Reddit*, 51 F.4th
10 at 1142-45.

11 **B. Plaintiffs Also Fail to Allege that MindGeek Knowingly Benefitted.**

12 As was the case in *Fleites*, even if Plaintiffs had sufficiently pled the existence
13 of a venture engaged in trafficking (and they have not), beneficiary liability under
14 the TVPRA also requires a defendant to have *knowingly* benefitted from participating
15 in the trafficking venture alleged. Plaintiffs have failed to plead that element as to
16 MindGeek.

17 As an initial matter, Plaintiffs again invoke the same two cases cited in the
18 *Fleites* Opposition for the mistaken notion that Defendants need only have
19

20 ¹ Plaintiffs attempt to convert MindGeek’s website tools to participation in sex
21 trafficking by arguing that MindGeek’s “suggestions, instruction, or intervention” is
22 evidence of MindGeek’s participation and benefit. Opp. 10-11. Fatal to Plaintiffs’
23 argument is that none of the Complaints’ allegations cited in ostensible support of
24 this self-serving conclusion specifies any “suggestions, instruction, or intervention”
25 specific to the uploading of illegal content. *See, e.g.*, K.A. ¶¶ 4, 43, 116. Instead, as
26 alleged by Plaintiffs, the “How to Succeed” section of Pornhub’s website provides
27 only suggestions to users for their selection of tags, writing creative titles, and adding
28 a stage name to the title of the video. *Id.* ¶ 116. Plaintiffs then make the leap that the
fact that MindGeek included tags like “teen,” “school,” “babysitter,” and
“old/young” is “demonstrate[ive]” of how MindGeek was “specifically targeting
viewers who are interested in child pornography.” Not only are those specific
categories not presumptively and exclusively demonstrative of CSAM, but they
mirror similar categories in *Reddit*, which included: “/r/BestYoungNSFW,”
“r/teensdirtie,” “/r/TeenBeauties,” and “/r/YoungGirlsGoneWild.” *Reddit*, 51 F. 4th
at 1139.

1 knowledge that a venture *generally* violated the TVPRA, but need not have *victim-
2 specific* knowledge. Opp. 6-8 (citing *Salesforce.com* and *Doe I v. Deutsche Bank
3 Akteingesellschaft*). But neither of those cases is remotely comparable to the facts
4 alleged here, as MindGeek showed in detail in its *Fleites* papers. *See Fleites* Reply
5 3-4 (distinguishing applicability of *Salesforce* and *Deutsche Bank* and noting in
6 particular the “overwhelming presence of trafficking” in those cases).

7 Plaintiffs next string-cite a laundry list of allegations that they represent show
8 MindGeek’s “actual knowledge of their participation and benefits from a venture
9 engaged in sex trafficking.” Opp. 15 (listing paragraphs). But the allegations
10 themselves fall short of showing “actual knowledge.” They say, for instance: that
11 MindGeek’s “business was built” on utilization of CSAM, *id.*, which is not only a
12 misstatement but also not indicative in any way of actual knowledge of MindGeek’s
13 participation in a trafficking venture vis-à-vis Plaintiffs; and that the “tags, titles, and
14 comments” on Plaintiffs’ videos *should* have indicated that Plaintiffs were minors,
15 and that MindGeek reuploaded disabled videos under different usernames, *id.*,
16 neither of which again has any bearing on whether MindGeek had actual knowledge
17 of a trafficking venture as to Plaintiffs. Even Plaintiffs’ contention that MindGeek’s
18 human moderators reviewed each video is not, standing alone, dispositive proof of
19 actual knowledge. Though Plaintiffs cite to *Doe v. MindGeek* in purported support,
20 they fail to point out that, in that case, MindGeek was alleged not only to have
21 reviewed each video but *also* to have had specific knowledge of the *Doe* plaintiff’s
22 ex-boyfriend, who had posted the relevant videos and was known to have posted
23 videos depicting other victims. *Doe v. MindGeek USA Inc.*, 574 F. Supp. 3d 760, 774
24 (C.D. Cal. 2021). That is a level of specific knowledge that plainly exceeds Plaintiffs’
25 allegations about MindGeek here.

26 Read closely, the allegations Plaintiffs compile are subjective and inflated
27 suggestions of, at most, a level of constructive knowledge that, as MindGeek
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1 conclusively established in its Reply in *Fleites*, is not sufficient to show actual
2 knowledge. *Fleites* Reply 3-4. Indeed, Plaintiffs' claims that the furnishing of "tags,
3 titles, and comments" constitutes actual knowledge in this case are identical to those
4 that *Fleites* contended constitute only constructive knowledge, and it is not clear what
5 justifies their apparent elevation here. In any event, Plaintiffs have entirely failed to
6 engage with MindGeek's argument in *Fleites* that the constructive knowledge alleged
7 is insufficient as a matter of law, choosing instead to simply repeat the same futile
8 argument offered in the Opposition in *Fleites*. *Compare* Opp. 15-16 *with* *Fleites* Opp.
9 18-19. But as MindGeek has already detailed in its Reply in *Fleites*, that argument
10 fails, even as Plaintiffs have resurrected it here. *See* *Fleites* Reply 3-4.

11 **II. PLAINTIFFS' REMAINING CLAIMS ARE DEFICIENT AND
12 SHOULD BE DISMISSED**

13 **A. Plaintiffs' State Claims Are Barred by Applicable Statutes of
14 Limitations**

15 Plaintiffs' contention that their state law claims "did not accrue until
16 MindGeek remove[d] all illicit content of Plaintiffs on its sites", Opp. 43, lacks legal
17 merit. The essence of Plaintiffs' claims of wrongdoing by MindGeek is MindGeek's
18 allegedly unauthorized use of their images. Opp. 42 ("the alleged wrongdoing was
19 the continuous reformatting, re-uploading . . . , dissemination, and monetization of
20 Plaintiffs' CSAM images on MindGeek's sites"). Plaintiffs' non-TVPA state claims
21 premised on this wrongdoing are therefore subject to the single-publication rule. *Doe*
22 *v. Aylo Glob. Ent. Inc.*, 2024 WL 4599539, at *8 (C.D. Cal. June 24, 2024)
23 (dismissing claims for misappropriation of likeness, violation of right of privacy,
24 false-light invasion of privacy, and intentional infliction of emotional distress as
25 time-barred, because "[c]laims arising from an unauthorized use of a plaintiff's name
26 and image, such as Plaintiff's publicity and privacy claims, are subject to the 'single-
27 publication rule'"); *see also* Cal. Civ. Code § 3425.3; *Yeager v. Bowlin*, 693 F.3d
28 1076, 1081-82 (9th Cir. 2012) (applying single-publication rule to internet content);

1 *Corinna Warm & Studio Warm LLC v. Innermost Ltd.*, 2022 WL 2062914, at *4
2 (C.D. Cal. Apr. 26, 2022) (applying single-publication rule to Cal. Civ. Code § 3344
3 claim); *Mullan v. Daniels*, 2021 WL 1323421, at *8 (N.D. Cal. Jan. 29, 2021)
4 (dismissing emotional-distress, negligence, and trade-libel claims as time-barred
5 because those claims were based on the same statements as a defamation claim which
6 was subject to the single-publication rule and time-barred); *Tseng v. PeopleConnect, Inc.*, 665 F. Supp. 3d 1136, 1144 (N.D. Cal. 2023) (applying single-publication rule
8 to California UCL claim).

9 Under the single-publication rule, the statute of limitations begins to run when
10 the challenged material is “first made available to the public.” *Yeager*, 693 F.3d at
11 1081-82. While the statute of limitations can be reset when a statement is republished,
12 in the context of internet content, such resetting only occurs when “the statement
13 itself is substantively altered or added to, or the website is directed to a new
14 audience.” *Yeager*, 693 F.3d at 1082. “[C]ontinuing to host the statement” and/or
15 modifying other parts of the website is not enough to constitute republication.” *Id.* at
16 1084; *Aylo Glob. Ent. Inc.*, 2024 WL 4599539, at *9 (“the Subject Videos would not
17 be considered to be republished just by continuing to host the videos”). Reuploading
18 a video in a format that has not been “substantively altered or added to” also does not
19 constitute republication, even when the video is uploaded to a different website that
20 is just as widely-accessible. *See Aylo Glob. Ent. Inc.*, 2024 WL 4599539, at *9
21 (finding that alleged reuploading of original video with a different title did not
22 substantively alter the video or direct the website to a new audience and thus there
23 was no republication of the video); *Clark v. Viacom Int'l Inc.*, 617 F. App'x 495, 505
24 (6th Cir. 2015) (“Statements that are posted to a forum that is prominently accessible
25 to the online public have a presumptively global audience, and subsequent alterations
26 of format . . . are not likely to have a measurable effect on the statements’ ability to
27 be accessed by a new band of viewers.”); *Ibarra v. Carpinello*, 2011 WL 925719, at
28

1 *9 (Cal. Ct. App. Mar. 18, 2011) (“Defendants’ publication on the Internet, no matter
2 how long it remained available thereafter, is deemed a single publication as of the
3 date it was first posted.”).

4 Here, Plaintiffs have failed to identify any legal support for the proposition
5 that MindGeek’s alleged continued reformatting, reuploading, monetization, and
6 dissemination of Plaintiffs’ videos constitute republication of their original videos on
7 MindGeek’s sites.² *See Aylo Glob. Ent. Inc.*, 2024 WL 4599539, at *9 (rejecting
8 argument that use of tagging in search algorithm attracted new audiences as opposed
9 to just recommending the videos to users already on the website); *Roberts v. McAfee, Inc.*,
10 660 F.3d 1156, 1168 (9th Cir. 2011) (failure to remove challenged content did
11 not undermine application of single-publication rule). The statute of limitations for
12 their non-TVPA state claims therefore began to accrue at the time Plaintiffs
13 discovered the publication of the illicit videos, which, as explained in MindGeek’s
14 Opening Brief at 15-24, was beyond the applicable limitations period for certain of
15 the Plaintiffs’ claims.

16 Similarly, Plaintiffs’ contention that their “claims have been tolled since
17 February 19, 2021, due to the filing of the class action complaint in *Doe v. MindGeek
18 USA Inc., et al.*”, Opp. 43, misstates applicable law. Because the Related Cases were
19 filed in federal court, as was *Does v. MindGeek USA*, Plaintiffs’ state law claims are
20 cross-jurisdictional, and California law does not apply, *see American Pipe & Constr.
21 Co. v. Utah*, 414 U.S. 538 (1974), to cross-jurisdictional claims. *See Centaur Classic*

22 _____
23 ² Purportedly distinct injuries caused by MindGeek’s alleged continued reformatting,
24 reuploading, monetization, and dissemination of Plaintiffs’ videos are in fact the
25 “mere continuing impact” from the original posting of the videos and are therefore
26 not subject to the continuing violation doctrine. *See Jackson v. Medical Board of
27 Cal.*, 2012 WL 13019955, at *6 (C.D. Cal. Apr. 19, 2012) (rejecting plaintiff’s
28 application of the continuing tort doctrine under single-publication rule, reasoning
that the continued public availability of the disputed content was “best characterized
as a mere continuing impact from past violations [that] is not actionable’ as a new
claim”); *see also Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001) (declining to
apply the continuing violation doctrine where the plaintiff “failed to establish that a
new violation occurs each time she is denied her visitation or mail privileges”
because these denials were “merely the continuing effect of the original suspension”).

1 *Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, 878 F. Supp. 2d 1009,
2 1017 (CD. Cal. 2011) (holding that “[b]ecause California does not recognize cross-
3 jurisdictional tolling, th[e] Court ha[d] no authority to apply *American Pipe* to toll
4 the state statutes of limitations”); *Williams v. Countrywide Fin. Corp.*, 2017 WL
5 986517, at *8 (C.D. Cal. Mar. 13, 2017) (adopting reasoning in *Centaur Classic* and
6 dismissing state law claims because “California does not recognize *American Pipe*
7 tolling in cases where a plaintiff pursues claims afforded by the law of one
8 jurisdiction (i.e., California state court), in the courts of another jurisdiction (i.e.,
9 federal district court)”). Therefore, Plaintiffs’ state law claims were not tolled by the
10 filing of the class action in this jurisdiction.³

11 **B. Plaintiffs’ Claim for Intentional Infliction of Emotional Distress Is
12 Insufficiently Pled.**

13 Plaintiffs’ claim for intentional infliction of emotional distress (“IIED”) fails
14 because it is based on generalized allegations that do not support a reasonable
15 inference that MindGeek acted with the intention of causing the Plaintiffs’ emotional
16 distress or that MindGeek’s conduct arose to the requisite level of outrageousness.
17

18 To support this claim, Plaintiffs argue that, “construed in the light most
19 favorable to Plaintiffs,” the complaints allege the MindGeek Defendants: (1)
20 reviewed each of Plaintiffs’ underage images or videos; (2) instructed traffickers on
21

22 ³ Even if the Court were to apply *American Pipe* to toll the statute of limitations of
23 Plaintiffs’ state-law claims as of February 19, 2021, certain of these claims would
24 still be untimely based on the face of Plaintiffs’ complaints. *See, e.g.*, K.A. (false
25 light and misappropriation of likeness claims barred by applicable statutes of
26 limitations); L.T. (false light claim barred by applicable one-year statute of
27 limitations); N.Y. (misappropriation of likeness claims barred by applicable statutes of
28 limitations); C.S. (same); S.O. (false light claim barred by applicable one-year statute
of limitations); W.L. (same); A.K. (public disclosure of private facts, intrusion into
private affairs, false light, misappropriation of likeness, Cal. Civ. Code § 1780.85,
negligence, Cal. Bus. & Prof. Code §§ 17200 & 17500, intentional infliction of
emotional distress, and civil conspiracy claims barred by applicable statutes of
limitations); J.L (public disclosure of private facts, intrusion into private affairs, false
light, misappropriation of likeness, Cal. Civ. Code § 1780.85, negligence, Cal. Bus.
& Prof. Code §§ 17200 & 17500, intentional infliction of emotional distress, and civil
conspiracy claims barred by applicable statutes of limitations).

1 how to optimize the videos; (3) transformed, optimized, and incorporated Plaintiffs’
2 content into the MindGeek SEO algorithm; (4) stonewalled victims who attempted
3 to have this illicit content removed; and (5) then affirmatively reuploaded previously
4 removed content under different names and titles. Opp. 44 (citing to Opp. § I.A).
5 None of the actual allegations cited, however, is sufficient to show that MindGeek
6 acted with an intent to inflict *the Plaintiffs’* injuries or that it engaged in conduct with
7 the realization that injury *to the Plaintiffs* would result. *See Christensen v. Superior*
8 *Court*, 54 Cal. 3d 868, 906 (1991) (holding that plaintiffs failed to allege “that the
9 conduct of any of the defendants *was directed primarily at them*, was calculated to
10 cause them severe emotional distress, or was done with knowledge of their presence
11 and of a substantial certainty that they would suffer severe emotional injury”
12 (emphasis added)). Moreover, Plaintiffs’ conclusory allegations that MindGeek
13 personnel “reviewed” the Plaintiffs’ videos “as they repeatedly have claimed to do
14 for every image uploaded to its tubesites”, and “categorized, tagged, optimized” and
15 “uploaded” the videos to its tubesites, K.A. Compl. ¶ 318, cannot save this claim.
16 Plaintiffs have not pled facts showing that MindGeek even could have known, let
17 alone did know, that the videos *of the Plaintiffs* contained underage material and were
18 created without consent. *See Caraccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056,
19 1063 (N.D. Cal. 2016), *aff’d*, 700 F. App’x 588 (9th Cir. 2017) (concluding the
20 plaintiff could not state a claim for IIED because the claim “require[s] intent on the
21 part of the tortfeasor”).

22 Plaintiffs’ allegations also are insufficient to plead that *MindGeek* engaged in
23 any outrageous conduct. Indeed, Plaintiffs’ reliance on their allegation that Plaintiffs
24 were victimized when they were “coerced and exploited” and the videos were
25 “uploaded to MindGeek’s platform” confirms that the only actionable conduct
26 alleged was committed by *third parties* and *not* MindGeek. *See* K.A. Compl. ¶ 318.
27 The remaining conduct that allegedly victimized the Plaintiffs, *i.e.*, “as a matter of
28

1 course,” transferring videos to tubesites and users and failing to police and report
2 such content to the authorities, K.A. Compl. ¶¶ 63, 68, “describes, at best, passive
3 conduct” on the part of MindGeek, which is not actionable. *Reaud v. Facebook Inc.*,
4 2024 WL 4126066, at *3 (N.D. Cal. Sept. 9, 2024); *Caraccioli*, 167 F. Supp. 3d at
5 1064 (dismissing IIED claim where plaintiff failed to show Facebook acted
6 intentionally in declining to remove content).⁴ Thus, Plaintiffs’ IIED claims must be
7 dismissed.

8 **C. Plaintiffs Have Not Pled Any Facts to Support MindGeek’s**
Intentional Commission of Any Injury-Inflicting Conduct.

9 Plaintiffs fail to identify any allegations of fact establishing that MindGeek
10 intentionally committed any conduct giving rise to Plaintiffs’ deficient claims of
11 public disclosure of private facts (Count VII), intrusion into private affairs (Count
12 VIII), placing plaintiffs in a false light (Count IX), common law and statutory
13 misappropriation of name and likeness (Counts X and XI), and distribution of private
14 sexually explicit materials in violation of California Civil Code § 1708.85 (Count
15 XII). Plaintiffs contend that MindGeek “approve[d], optimize[d], upload[ed],
16 disseminate[d], [and] republish[ed] the videos to its other tubesites, “and” deploy[ed]
17 MindGeek’s algorithm to enhance traffic to Plaintiffs’ videos “with knowledge that
18 the Plaintiffs were minors and even, in certain circumstances, after Plaintiffs had
19 requested the videos be removed.” Opp. 46-47. Critically, however, Plaintiffs fail to
20 allege *any* specific facts to support an essential element that MindGeek knew that the
21

22 _____
23 ⁴ Plaintiffs’ reliance on *Doe v. Johnson*, 2018 WL 3239315, at *4 (S.D. Cal. July 3,
24 2018) is misplaced. There, the defendant committed the outrageous conduct, *i.e.*,
25 placing a camera in the drain of the women’s restroom in order to record female
26 subordinates, and did not dispute that the IIED claim was sufficiently pled or its
27 merits. In contrast, here, Plaintiffs merely aver in “conclusory terms” that MindGeek
28 “knew, or recklessly disregarded, that Plaintiff was harmed by the illegal CSAM
featuring her on defendants’ websites, but did nothing to help her, and instead
directed and encouraged the proliferation of CSAM on its websites” without alleging
“any facts establishing” that MindGeek “acted with an intent to injure [Plaintiffs] or
even with a realization that [they] would be injured, as required to sustain an IIED
claim.” *Reaud*, 2024 WL 4126066, at *3.

1 Plaintiffs were minors. Instead, Plaintiffs' allegations concede that: (1) a then-
2 boyfriend or unidentified third party published the videos in the first instance, *not*
3 *MindGeek*; (2) *MindGeek*'s Terms of Service *prohibit* the posting of minors; (3)
4 *MindGeek* employees regularly performed content-moderation functions; and (4)
5 once the videos were reported to *MindGeek* as CSAM, the videos were removed from
6 the *MindGeek* website. *See, e.g.*, K.A. Compl. ¶¶ 50, 117, 311, 315-316. These
7 allegations demonstrate that *MindGeek* did not intentionally approve, optimize,
8 upload, disseminate or republish the minor Plaintiffs' videos, and thus foreclose
9 Counts VII, VIII, IX and XII. *See Caraccioli*, 167 F. Supp. 3d at 1064 (dismissing
10 false-light and public-disclosure claims because plaintiff had not plausibly alleged
11 the defendant's publication of the content); *Nikogosian v. Cavalry Portfolio Servs.,*
12 *LLC*, 2012 WL 2568124, at *3 (C.D. Cal. July 2, 2012) (dismissing false-light claim
13 because plaintiff had not alleged that defendant published or otherwise
14 communicated any statement to a third party).⁵

15 **D. Plaintiffs' Misappropriation Claims Are Insufficiently Pled for
16 Additional Reasons.**

17 Plaintiffs do not claim they appeared in any ads for *MindGeek*, nor do they
18 argue that their images were used to suggest that they endorsed products advertised
19 on *MindGeek*'s website or that *MindGeek* capitalized on their specific identities.
20 Instead, Plaintiffs claim that *MindGeek* misappropriated their likenesses by (i)
21 "profiting from the unauthorized dissemination of Plaintiffs' images and videos to
22 attract users and drive traffic;" and (ii) "profiting from the unauthorized use by

23
24 ⁵ Plaintiffs' reliance on *Michaels v. Internet Ent. Grp., Inc.*, 5 F. Supp. 2d 823, 839-
25 43 (C.D. Cal. 1998) is inapposite. There, the defendant notified the plaintiffs that it
26 had acquired the plaintiffs' sex tape and all rights necessary to publish the tape. One
27 of the plaintiffs notified the defendant that he had not authorized any distribution of
28 the tape and that publication of the tape would violate the plaintiff's common-law
and statutory rights to privacy. Here, the complaints acknowledge that third parties
uploaded the videos, and specify no allegations showing that *MindGeek* knew the
videos contained underage material and were disseminated without consent.

1 placing advertisements alongside the videos of Plaintiff.” Opp. 48. Both theories are
2 insufficient to state misappropriation claims.

3 Plaintiffs fail to plead any facts to support MindGeek’s user of their videos to
4 “attract users and drive traffic.” Opp. 48. Indeed, Plaintiffs fail to identify a single
5 fact in the complaints showing that MindGeek used Plaintiffs’ videos to “grow their
6 content library and perfect their SEO analysis,” *id.* Instead, Plaintiffs offer only
7 generalized allegations about MindGeek’s “unrestricted content” SEO model. *Id.*
8 (citing K.A. Compl. ¶¶ 59-61, 67, 74-77). And again, Plaintiffs concede that third
9 parties published the videos in the first instance. *See supra* Section II(C). *Perfect*
10 *10, Inc. v. Google, Inc.* is instructive. 2010 WL 9479060 (C.D. Cal. July 30, 2010),
11 *aff’d*, 653 F.3d 976 (9th Cir. 2011). There, Google owned and operated a service that
12 allowed account holders to create their own blogs hosted on Google’s servers,
13 including blogger websites that displayed the plaintiff’s name and likeness. *Id.* at
14 *13. The plaintiff argued Google “materially contribut[ed] to violations of Perfect
15 10’s assigned rights of publicity by providing the advertising which satisfies the
16 commercial purpose necessary to establish a violation of Section 3344(a) and the
17 common law.” *Id.* The court rejected this argument, explaining that “a plaintiff must
18 show that *the defendant* appropriated the plaintiff’s name or likeness for commercial
19 purposes, and there must be a direct connection between the defendant’s use of the
20 likeness and that commercial purpose.” *Id.* (emphasis in original). Just like Google,
21 MindGeek’s alleged “contribution” to third parties’ violation of the Plaintiffs’ rights
22 “is not the same as actually ‘violating’” them. *Id.*

23 Finally, as a matter of California law, merely hosting an image of the Plaintiffs
24 adjacent to ads with no connection to them is not an actionable “use” of their
25 identities. *See Cross v. Facebook, Inc.*, 14 Cal. App. 5th 190, 210 (2017) (unrelated
26 ads created by third-party users adjacent to the content that allegedly used plaintiff’s
27
28

1 likeness did not support that Facebook used plaintiff's identity). Counts X and XI
2 therefore must be dismissed.

3 **E. Plaintiffs' Unfair-Competition Claims Must Be Dismissed Because
4 They Have Not Alleged Any Economic Injury.**

5 Plaintiffs argue that they were harmed as a result of MindGeek's unfair
6 business practices "when they sustained financial losses by having to pay for therapy,
7 by taking time away from work, and by having to hire investigative firms to have
8 their images taken down." Opp. 54. Plaintiffs ignore, however, their fatal failure to
9 specify any losses of money or property *caused* by MindGeek's unfair competition,
10 *i.e.*, fraudulently deceiving "its users that they were monetizing, distributing, and
11 advertising legitimate, legal content." *See, e.g.*, K.A. Compl. ¶ 432; *Reddit*, 2021 WL
12 5860904, at *9 (dismissing UCL claim where "there is no indication in the
13 [complaint] that Plaintiffs have lost money or property as a result of Reddit's alleged
14 conduct"). On this ground alone, Count XIV must be dismissed.

15 **F. Plaintiffs Have Not Alleged a Claim for Civil Conspiracy**

16 Plaintiffs contend that "Defendants' civil conspiracy can be easily inferred
17 here based on Colbeck's Redwood's' [sic] and Visa's years-long relationships with
18 MindGeek, their actual knowledge of the extent of MindGeek's criminal conduct,
19 and Defendants' motives to maximize their own profits." Opp. 52 (citations omitted).
20 Not so. To adequately plead a claim for conspiracy, "plaintiffs must allege: (1) the
21 formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the
22 conspiracy, and (3) damages arising from the wrongful conduct." *Lu v. Deng*, 2016
23 WL 6583599, at *5 (C.D. Cal. Nov. 7, 2016). The conspirators must "agree to do
24 some act which is classified as a 'civil wrong' . . . [and] must have actual knowledge
25 that a tort is planned and concur in the tortious scheme with knowledge of its
26 unlawful purpose." *Kidron v. Movie Acquisition Corp.*, 40 Cal. App. 4th 1571, 1582
27 (1995).

28

1 Plaintiffs have not alleged facts showing any “meeting of the minds” between
2 the defendants, or even facts regarding actions defendants “took in furtherance of the
3 conspiracy.” *See Ponomarenko v. Shapiro*, 287 F. Supp. 3d 816, 831 (N.D. Cal.
4 2018). Plaintiffs do not even attempt to identify any such alleged facts and instead
5 merely assert that “MindGeek was engaged in a venture to profit from sex-trafficking
6 and to distribute private, sexually explicit materials, and Visa, Colbeck, and
7 Redwood each knowingly and intentionally agreed to provide MindGeek with the
8 means to effectuate and continue that venture with the resources, assistance, and tools
9 necessary to profit from and grow that venture.” Opp. 51. Plaintiffs fail to allege
10 “how the conspiracy formed or operated,” and whether the defendants “had
11 knowledge of or intent to aid in wrongful activity.” *Id.* Plaintiffs’ cursory allegation
12 that “defendants conspired and acted in concert to commit unlawful acts,” *see, e.g.*,
13 K.A. Compl. ¶ 453, is not enough to state a claim for civil conspiracy, and thus Count
14 XVI must be dismissed. *See Lu*, 2016 WL 6583599, at *5.

15 **G. Plaintiffs Have Not Stated, and Cannot State a Claim for
16 Negligence.**

17 Plaintiffs cite to no case law which refutes MindGeek’s showing that, on the
18 facts alleged, MindGeek owed Plaintiffs any legal duty. Instead, Plaintiffs continue
19 to baselessly insist that MindGeek breached its duty to use *ordinary* care to prevent
20 injury to Plaintiffs because it was “eminently foreseeable that an unrestricted content
21 business model would lead to the optimization and monetization of illegal and
22 exploitative pornography.” Opp. 49. In so doing, Plaintiffs misconstrue the authority
23 which MindGeek has cited and which makes clear that it does not have a legal duty
24 to inspect every single user-generated message before it is displayed to the public.
25 Contrary to Plaintiffs’ wishful spin, these cases are not “plainly distinguishable”
26 because they ostensibly involve “purely passive posting of third-party content,”
27 whereas MindGeek allegedly “transform[ed], optimiz[ed], commercializ[ed],
28 distribut[ed], and monetize[d] Plaintiffs’ CSAM content.” Opp. 50.

1 To the contrary, all of the plaintiffs in the cases MindGeek cites alleged more
2 than “passive conduct” by the defendant. In *Reddit*, the plaintiff alleged that Reddit
3 “knowingly facilitates the posting of CSEM and benefits from the CSEM in the form
4 of increased advertising revenue and subscription fees by premium Reddit users” by,
5 *inter alia*, “highlight[ing] subreddits that feature child pornography to sell advertising
6 on [its] pages.” *Doe v. Reddit, Inc.*, 2021 WL 5860904, at *2 (C.D. Cal. Oct. 7, 2021);
7 *Does 1-6 v. Reddit, Inc.*, 51 F.4th 1137, 1145 (9th Cir. 2022). The district court
8 nonetheless concluded Reddit did not have “a legal duty to inspect every single user-
9 generated message before it is communicated to a single person or displayed to the
10 public[.]” *Reddit*, 2021 WL 5860904, at *8. And in *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1095 (9th Cir. 2019), the plaintiff alleged that Ultimate Software
11 “steered users to additional groups dedicated to the sale and use of narcotics,” and
12 “sent users alerts to posts within groups that were dedicated to the sale and use of
13 narcotics.” Still, the court concluded that Ultimate Software did not owe any duty to
14 the plaintiff’s son because the relevant “recommendations and notifications”
15 facilitated communication only in a content-neutral fashion. *Id.* at 1097-98.

17 Here, MindGeek’s alleged use of “SEO” (Search Engine Optimization) to
18 “generat[e] traffic and obtain[] content,” K.A. Compl. ¶ 48, similarly facilitates
19 communication in a content-neutral fashion because, as with Ultimate Software’s
20 alleged “recommendations and notifications,” SEO is “used regardless of the groups
21 in which a user participated.” *Dyroff*, 934 F.3d at 1101 (“No website could function
22 if a duty of care was created when a website facilitates communication, in a content-
23 neutral fashion, of its users’ content.”). Indeed, Plaintiffs concede as much:
24 “MindGeek’s motivation for its unrestricted use of nonconsensual content was its
25 singular priority of using SEO *to be the top search engine website result in any porn*
26 *related search.*” K.A. Compl. ¶ 59 (emphasis added). Because MindGeek therefore
27 did not owe a duty of care to Plaintiffs, their negligence claims must be dismissed.
28

1 **III. SECTION 230 REQUIRES DISMISSAL OF ALL OF PLAINTIFFS’
2 CLAIMS**

3 **A. MindGeek Did Not Create or Develop the Unlawful Content.**

4 Like Fleites before them, Plaintiffs acknowledge that section 230 bars their
5 claims unless their complaints sufficiently allege that MindGeek made a “material
6 contribution” to the unlawful content at issue. Opp. 55. Also like Fleites, in arguing
7 that MindGeek is a “content creator,” Plaintiffs fail to confront the actual applicable
8 legal standard and instead attempt to distract the Court with incendiary—and false—
9 allegations regarding MindGeek’s purportedly overarching business practices. But
10 just as the Fleites SAC offered no actionable allegations of fact, the Plaintiffs’
11 complaints and Opposition again fail to demonstrate how MindGeek “materially
12 contributed” to the creation of the videos of the Plaintiffs. Therefore, for the reasons
13 explained in MindGeek’s Reply in *Fleites* and further below, Plaintiffs’ complaints
14 should be dismissed.

15 Plaintiffs profoundly mischaracterize “[t]he gravamen of MindGeek’s
16 [s]ection 230 defense,” Opp. 55, just as they misconstrue their underlying allegations
17 as somehow asserting facts showing that MindGeek “create[es] and develop[s] []
18 child pornography.” *See* Opp. 56. The true gravamen of MindGeek’s section 230
19 defense is that, when properly applied to the actual factual allegations as set forth in
20 Plaintiffs’ complaints, the governing law—which holds that even if a website
21 operator “could be considered an information content provider,” section 230 “still
22 bar[s] [a plaintiff’s] claim unless [the website operator] created or developed the
23 *particular [content] at issue*”—dictates dismissal of Plaintiffs’ claims as barred by
24 section 230. *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125 (9th Cir. 2003)
25 (emphasis added); *accord Fed. Agency of News LLC v. Facebook, Inc.*, 432 F. Supp.
26 3d 1107, 1118 (N.D. Cal. 2020) (section 230 barred plaintiff’s claims that Facebook
27 “created other content,” including by utilizing “data mining” “to direct users to
28 content in order to generate billions in revenue,” as well as the third-party account,

1 posts, and content at issue). Plaintiffs contend in their Opposition that MindGeek
2 “edits the titles, tags, thumbnails, and scenes” to optimize the search and promotion
3 of uploaded content. These allegations that MindGeek may have created or
4 developed content other than the videos of Plaintiffs—which Plaintiffs do not dispute
5 were all created by third parties—are therefore irrelevant. But even if the Court were
6 to consider Plaintiffs’ allegations that extend beyond the specific content depicting
7 Plaintiffs as relevant to the section 230 analysis, the content-neutral tools and
8 processes to which Plaintiffs point—such as titles, tags, thumbnails, and search
9 algorithm—are not sufficient to deny section 230 immunity here because the
10 complaints still fail to show “substantial affirmative conduct on the part of
11 [MindGeek] promoting the use of [its] tools for *unlawful* purposes.”⁶ *Fair Housing*
12 *Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1174 n.37
13 (9th Cir. 2008) (emphasis added). Merely asserting in their Opposition that “Plaintiffs
14 have thoroughly pled MindGeek’s contributions to the creation and development of
15 illegal content on its websites, including Plaintiffs’ videos,” without pointing to—or
16 ever pleading—sufficient facts in their complaints to overcome applicable precedent,
17 does not make the assertion one on which this Court may properly rely, for these
18 primary reasons:

19 *First*, like Fleites, none of the complaints allege that *MindGeek* created
20 Plaintiffs’ videos. None of the generalized allegations about MindGeek’s
21 overarching business practices remedy this undeniable flaw in Plaintiffs’ arguments.
22 For example, they argue with respect to content creation that MindGeek “provides

23

24 ⁶ Plaintiff’s reliance on earlier cases in which courts allowed claims to proceed
25 against MindGeek is unavailing. *See* Opp. 56. As explained in MindGeek’s Reply in
26 *Fleites*, although those cases were brought against MindGeek and involved
27 allegations about MindGeek’s general business practices, those cases involved
28 materially different plaintiffs’ circumstances, and were decided without the benefit
of the Ninth Circuit’s most recent opinion on section 230 immunity in *Reddit* and
Doe v. WebGroup Czech Republic, a.s., 2024 WL 3533426, at *6-7 (C.D. Cal. July
24, 2024), a decision from this District that addressed allegations very similar to those
asserted by Plaintiff,

1 its global network of sex traffickers VPN services to allow them to obscure their
2 locations and identities.” Opp. 57. Even assuming, *arguendo*, the truth of this
3 allegation, this “global network of sex traffickers” is irrelevant to Plaintiffs’ videos
4 because they were created by third parties whom Plaintiffs do *not* allege are part of
5 this global network. Plaintiffs also fail to show how the alleged use of VPN services
6 “materially contributed” to the unlawful content posted on MindGeek’s websites,
7 rather than simply being used to make available a neutral tool accessible to all of the
8 website’s users and plainly protected under section 230. *See Doe v. WebGroup Czech
Republic, a.s.*, 2024 WL 3533426, at *7 (C.D. Cal. July 24, 2024) (dismissing claims
10 based on CSAM posted on websites operated by defendants on section 230 grounds
11 where plaintiffs alleged in part that the defendants use VPNs to anonymize web
12 traffic).

13 **Second**, like Fleites, Plaintiffs’ mischaracterizations of MindGeek’s conduct,
14 even if they were accurate, amount to no more than formatting of *existing* third-party-
15 user content and offering neutral tools to direct user traffic to *user-created* content.
16 Opp. 56-57. But even if the underlying allegations in the complaints to which
17 Plaintiffs cite for these mischaracterizations were true, they do not overcome section
18 230 immunity. The use of titles, tags, categories, and keywords to facilitate a user’s
19 search of content—even if that search is for unlawful or illicit content, *or* the titles,
20 tags, and categories include indicia of CSAM, *or* the website operator knows that
21 third parties use those tools to create illegal content—and the use of thumbnails and
22 other actions to edit for length “do[] not amount to ‘development’ for purposes of the
23 immunity exception.” *Roommates*, 521 F.3d at 1169.⁷

24 _____
25 ⁷ *See id.* (“A website operator who edits user-created content—such as by . . .
26 trimming for length—retains his immunity for any illegality in the user-created
27 content, provided that the edits are unrelated to the illegality.”); *WebGroup Czech*,
2024 WL 3533426, at *7-8 (applying section 230 to preclude claims where
defendants made available to users “titles, tags, keywords, search terms, and
categories” “indicative of CSAM” because such tools are “either a standard
publishing function or a neutral tool made available to all third parties seeking to
(footnote continued)

1 **Third**, Plaintiffs’ contention that MindGeek “maintains the webpage and
2 thumbnails for disabled videos so that the MindGeek Defendants can continue to
3 generate traffic and revenue from that illegal content and direct users to similar
4 content” and “reuploads removed content”, Opp. 57, is not enough to save Plaintiffs’
5 claims. In *Reddit*, the Ninth Circuit assessed a very similar argument: that Reddit,
6 like MindGeek, “has done little to remove the unlawful content or prevent it from
7 being posted, because it drives user traffic and revenue.” 51 F.4th at 1139. There, the
8 Ninth Circuit concluded that such allegations were not enough to preclude section
9 230 immunity, and the same conclusion should be drawn here. *Id.* at 1142.

10 **Fourth**, Plaintiff J.L.’s contention that “MindGeek maintains account
11 representatives for its content partner channels to help create trailers, revise content,
12 and advertise illicit content”, Opp. 57, is similarly insufficient to save her claims.
13 That MindGeek may devote an account representative to its content-partner channels
14 does not transform into actionable illegal misconduct the neutral use of titles, tags,
15 categories, keywords, and other tools to facilitate a user’s search of content, and
16 Plaintiffs conspicuously fail to cite to *any* case law showing otherwise.

17 Finally, Plaintiffs continue to mislead by claiming that “MindGeek has not set
18 forth any new facts or new cases that would warrant a different result.” Opp. 57. It is
19 not MindGeek’s burden at this stage to come forth with any facts. It is Plaintiffs’
20 burden to plead sufficient facts to show that MindGeek materially contributed to the
21 videos of the Plaintiffs under applicable law. Plaintiffs have not done so. Plaintiffs
22

23 upload material onto Defendants’ websites”); *Goddard v. Google, Inc.*, 640 F. Supp.
24 2d 1193, 1197-98 (N.D. Cal. 2009) (finding Google’s Keyword Tool a neutral tool
25 because “the users ultimately determine what content to post”). Similarly,
26 administrative and technical support provided by MindGeek to users uploading
27 content does not “materially contribut[e] to [the content’s] alleged unlawfulness.”
28 *United States v. eBay Inc.*, 2024 WL 4350523, at *10 (E.D.N.Y. Sept. 30, 2024)
29 (applying section 230 immunity even where plaintiff alleged that eBay has
30 “pervasive control over every aspect of the transaction on its website,” and eBay,
31 among other things, “assists in the drafting of the product listing, actively markets
32 the listings, . . . takes a fee . . . handles disputes” because such conduct was “neutral”).

1 are correct, however, that the cases to which MindGeek cites in its Opening Brief did
2 not involve allegations sufficient to show “defendants’ material contribution to the
3 illegality of the content at issue.” Opp. 57. That is the point. Those cases either failed
4 on allegations similar to those asserted by Plaintiffs here, and which similarly failed
5 to meet the applicable legal standard to warrant an exception to section 230, or they
6 were cited to show that all of Plaintiffs’ proffered causes of action are barred by
7 section 230 when applicable. *See Fyk v. Facebook, Inc.*, 808 F. App’x 597, 598 (9th
8 Cir. 2020) (barring claims under section 230 where third-party content at issue was
9 not altered by defendant); *Planet Green Cartridges, Inc. v. Amazon.com, Inc.*, 2023
10 WL 8943219, at *6-7 (C.D. Cal. Dec. 5, 2023) (barring claims under section 230
11 where defendant’s role as “online marketer, driving traffic, and promoting, selling,
12 and distributing products” was content-neutral); *Pennie v. Twitter, Inc.*, 281 F. Supp.
13 3d 874, 890 (N.D. Cal. 2017) (reiterating that “some editing on user-generated
14 content” does not vitiate the applicability of section 230); *Caraccioli v. Facebook, Inc.*,
15 700 F. Appx. 588, 590 (9th Cir. 2017) (barring claims for public disclosure of
16 private facts, intrusion upon seclusion, and false light under section 230, concluding
17 that the defendant “did not become the ‘information content provider’ under §
18 230(c)(1) merely by virtue of reviewing the contents of the suspect account and
19 deciding not to remove it”); *Joude v. WordPress Found.*, 2014 WL 3107441, at *7-
20 8 (N.D. Cal. July 3, 2014) (barring common law misappropriation of likeness claim
21 under section 230 where defendant was alleged to have hosted, maintained, and
22 administered blog content at issue); *Callahan v. Ancestry.com Inc.*, 2021 WL
23 783524, at *6 (N.D. Cal. Mar. 1, 2021) (barring statutory misappropriation-of-
24 likeness claim under section 230 where defendant posted content at issue in altered
25 format and made content accessible on different platform); *Doe #1 v. Twitter, Inc.*,
26 2023 WL 3220912, at *2 (9th Cir. May 3, 2023) (barring 18 U.S.C. §§ 1591, 1595,
27 2252A, and 2255 claims under section 230 where defendant failed to take down
28

1 alleged CSAM posts on site); *J.B. v. G6 Hospitality, LLC*, 2020 WL 4901196, at *7
2 (N.D. Cal. Aug. 20, 2020) (barring similar claims under section 230 where defendant
3 hosted victim’s alleged CSAM posts, despite allegations that defendant knew its site
4 was used for such illicit content, should have known that the actual posts were
5 CSAM, and did nothing to verify the actual ages of the individuals being advertised
6 on its site); *Doe v. Bates*, 2006 WL 3813758, at *4 (E.D. Tex. Dec. 27, 2006) (barring
7 similar claims under section 230, finding that the purported profits generated by
8 defendant from advertising on the page with the illicit content was not relevant in
9 determining section 230 applicability, and reiterating that “[w]hile the facts of a child
10 pornography case . . . may be highly offensive, Congress has decided that the parties
11 to be punished and deterred are not the internet service providers but rather are those
12 who created and posted the illegal material”); *Delfino v. Agilent Tech., Inc.*, 145 Cal.
13 App. 4th 790, 807 (2006) (barring claim for intentional infliction of emotional
14 distress under section 230 where defendant’s employee was solely responsible for
15 the creation of the illicit content). Plaintiffs have failed to make any meaningful
16 distinction between the allegations of the claims precluded by section 230 in
17 MindGeek’s cited cases and the allegations asserted by Plaintiffs here.⁸

18 **B. FOSTA’s Exception to Section 230 Immunity Does Not Apply.**

19
20 ⁸ None of MindGeek’s arguments or the applicability of the cases cited therein are
21 undermined by the summary-judgment ruling in *Doe v. MG Freesites, Ltd. et al.*, No.
22 7:21-cv-00220-LSC (N.D. Ala. Dec. 19, 2024), which Plaintiffs submitted as
23 supplemental authority after the filing of their Opposition. There, the court concluded
24 that section 230 immunity did not apply because it found that the MindGeek
25 defendants had created CSAM solely by “creating thumbnails” and “creating tags
26 and categories associated with CSAM.” *Id.* at 24-25. The Alabama court, however,
27 failed to consider that the content in the thumbnails was *user-generated* and *not*
28 created by MindGeek, and that making available the tags and categories on their own
is not illegal. *Id.* at 24-31. Most importantly, the Alabama court was under no
obligation to follow Ninth Circuit case law and therefore did not apply any Ninth
Circuit precedent in its ruling (indeed, it *explicitly* stated that Ninth Circuit case law
is *not* binding on it). *Id.* at 34. While the Alabama court may ignore Ninth Circuit
precedent, Plaintiffs cannot—and as explained throughout MindGeek’s Motion and
Reply here (and in *Fleites*), the conduct alleged by Plaintiffs does not amount to
content creation by MindGeek, and therefore, section 230 immunity applies to bar all
of their claims.

1 Plaintiffs similarly fail to plead sufficient facts to show that the FOSTA
2 exception to section 230 immunity applies, for all the reasons explained in
3 MindGeek’s Opening Brief at 7-12, its *Fleites* Reply at 11-12, and above.
4 Importantly, Plaintiffs wrongly posit that “MindGeek’s [alleged] actions are
5 materially different than those in Reddit [sic].” At bottom, Plaintiffs’ allegations,
6 including those regarding the specific videos depicting them, proffer no more than
7 what the plaintiffs in *Reddit* alleged: that “[MindGeek] provides a platform where it
8 is easy to share child pornography, highlights [content] that features child
9 pornography to sell advertising on those pages, allows [its moderators to participate
10 in the sharing and promotion of child pornography], and fails to remove child
11 pornography even when users report.” *Reddit*, 51 F.4th at 1145. Just as the Ninth
12 Circuit found there, such allegations do not show that MindGeek “knowingly
13 participated in or benefited from a sex trafficking venture.” *Id.* Plaintiffs’ complaints
14 therefore fail to sufficiently plead violations of Section 1591(a)(2) to establish
15 beneficiary liability. Accordingly, section 230 applies to bar Plaintiff’s claims under
16 the TVPRA.

17 **IV. PLAINTIFFS’ JURISDICTIONAL ARGUMENTS FAIL TO MEET
THEIR BURDEN.**

18 **A. MindGeek S.à r.l. Has No Relevant Contacts with the United States
and Thus Is Not Subject to Jurisdiction under Rule 4(k)(2) or 18
U.S.C. § 2255(c) as to of Any Plaintiffs’ Claims.**

19 Seeking to establish personal jurisdiction over MindGeek S.à r.l. in these
20 cases, Plaintiffs, represented by the same counsel as in *Fleites*, have resurrected a
21 theory of personal jurisdiction long disproven: that MindGeek S.à r.l. *operates*
22 Pornhub in the United States and is thus subject to jurisdiction anywhere in the United
23 States under Rule 4(k)(2) and 18 U.S.C. § 2255(c). *See* Opp. 74-76. But those
24 allegations—directly contradicted by MindGeek’s evidence—are unsupported by
25 any evidence either here or in *Fleites*. Andreou Decl. ¶ 28, ECF No. 78-2. The
26 undisputed fact is that MindGeek S.à r.l. is merely “a holding company, without any
27

1 employees or operations of its own.” *Id.* ¶ 28. MindGeek S.à r.l. thus does not operate
2 or own any of the websites or servers that “hosted, transferred, offered, distributed,
3 advertised, [or] sold CSAM” at issue. *See* Opp. 80; Andreou Decl. ¶ 32 (clarifying
4 that MG Freesites operates the tubesites at issue). Plaintiffs’ cited cases are thus inapt,
5 since each involved allegations that the defendants were actually operating or
6 creating the website at issue, not merely that they were the operator’s parent entity.
7 *See Doe v. WebGroup Czech Republic, a.s.*, 93 F.4th 442, 447 (9th Cir. 2024) (both
8 defendants “operated” the websites at issue); *Will Co. v. Lee*, 47 F.4th 917, 919-22
9 (9th Cir. 2022) (one defendant “created the site and purchased its domain name” and
10 the other operated the website). And the jurisdictional contacts of any of MindGeek
11 S.à r.l.’s operating subsidiaries cannot be imputed to it absent an alter-ego theory
12 (which, as discussed below, Plaintiffs fail to demonstrate). *See Doe v. Unocal Corp.*,
13 248 F.3d 915, 925 (9th Cir. 2001). Pornhub’s activities thus do not demonstrate any
14 contacts between the United States and MindGeek S.à r.l., a separate legal entity. *See*
15 *Aylo Glob. Ent. Inc.*, 2024 WL 4599539, at *10 (concluding MindGeek S.à r.l. is not
16 subject to personal jurisdiction under Rule 4(k)(2) because it is not the entity that
17 operates Pornhub).

18 Plaintiffs’ reliance on a Deferred Prosecution Agreement (“DPA”) in the
19 Eastern District of New York does not establish the requisite contacts by MindGeek
20 S.à r.l. in the United States to establish jurisdiction. *See* Opp. 73. None of the facts
21 stated in the DPA were established as to MindGeek S.à r.l. specifically. Instead,
22 “MindGeek” and the “Company” are defined as “MindGeek S.à r.l. (together with its
23 wholly-owned subsidiaries and affiliated entities . . .).” Dkt. No. 9, Case No. 1:23-
24 cr-00463-BMC-LB, at 48 (emphasis added). It is well-settled that consent to personal
25 jurisdiction in one case does not justify the exercise of personal jurisdiction in a
26 separate case. *See AM Tr. v. UBS AG*, 681 F. App’x 587, 589 (9th Cir. 2017) (the fact
27 that “UBS may have given [consent] to personal jurisdiction in California in other
28

1 cases” did not “amount to consent to personal jurisdiction in this case”); *Dow Chem.*
2 *Co. v. Calderon*, 422 F.3d 827, 833 (9th Cir. 2005) (rejecting argument that “by
3 failing to object to lack of personal jurisdiction in that suit, the [] defendants
4 impliedly consented to personal jurisdiction in this action”); *Engineered Floors, LLC*
5 *v. Lakeshore Equip. Co.*, 2023 WL 4203512, at *9(C.D. Cal. May 18, 2023)
6 (collecting cases).

7 For the same reason, neither the guaranty of U.S.-based loans nor the choice-
8 of-law and forum-selection clauses in the Shareholders’ Agreement establish
9 personal jurisdiction in this case. *See* Opp. 73-74. Plaintiffs are not parties to any of
10 those agreements, and those agreements have no bearing on any of Plaintiffs’ claims
11 here. Plaintiffs cannot “piggyback” on those agreements to establish personal
12 jurisdiction in this entirely separate case. *Wallach v. Johnson*, 2019 WL 4977474, at
13 *3 (D. Ariz. Oct. 8, 2019); *see, e.g.*, *42 Ventures v. Rend*, 2020 WL 6257069, at *
14 (D. Haw. Oct. 23, 2020) (rejecting assertion of personal jurisdiction based on
15 “Defendants’ agreements with third parties about choice of law, jurisdiction, or
16 venue” because they were “unrelated to personal jurisdiction[] in this case, where
17 Plaintiff was not a party to those agreements, nor is the allegedly infringing conduct
18 related to Defendants’ performance under those contracts”); *Pfister v. Selling Source,*
19 *LLC*, 931 F. Supp. 2d 1109, 1116 (D. Nev. 2013) (rejecting exercise of jurisdiction
20 based on arbitration clause designating Nevada as the forum where the plaintiff was
21 not a party to that agreement and did “not contend that it applies to her claim”).
22 Indeed, to support jurisdiction here, any alleged contact must give rise, or be
23 “close[ly] connect[ed],” to Plaintiffs’ injury. *See Yamashita v. LG Chem, Ltd.*, 62
24 F.4th 496, 506 (9th Cir. 2023) (“‘relate to’ ‘does not mean anything goes’”). Yet
25 contacts related to other business activities in the forum—like the Shareholders’
26 Agreement or loan agreements with U.S. lenders here—do not justify personal
27 jurisdiction over unrelated claims with unrelated parties. *Id.* at 506 (some contacts
28

1 with the forum state not sufficient where they related to other business activities).

2 **B. Plaintiffs' Alter-Ego Allegations Fail for the Same Reasons as in**
3 **Fleites.**

4 Plaintiffs rely again on the allegations, arguments, and evidence in *Fleites* to
5 support their claim that all the Defendants are subject to personal jurisdiction in
6 California because they are the alter-ego of each other. Yet as explained in *Fleites*,
7 Plaintiffs cannot meet their burden of demonstrating that MindGeek operates as
8 anything more than a typical, multi-national corporate enterprise. *See Fleites* Br. 31-
9 40; *Fleites* Reply 13-20.⁹ MindGeek S.à r.l.'s corporate structure was carefully vetted
10 by legal and tax professionals, and Plaintiffs have offered nothing to suggest that the
11 structure is not compliant with Luxembourg corporate law. *See Fleites* Reply 14. The
12 tax structure has never been challenged by any government entity, and Plaintiffs'
13 expert's "opinion" is based only on assuming the truth of allegations that MindGeek
14 has specifically refuted—and which Plaintiffs have offered nothing to support. *Id.* at
15 14-15. And Plaintiffs have not shown that the provision of intra-corporate services
16 or involvement of ultimate beneficial owners in high-level, strategic decision-making
17 demonstrates the requisite pervasive control to allow corporate veil-piercing. *Id.* at
18 15-16.

19 What's more, Plaintiffs fail to rebut the fact that there is no fraud or injustice
20 from respecting the corporate form here (though they now admit that they must show
21 such fraud or injustice to prevail on their alter-ego theory, *contra Fleites* Opp. 82-83
22 (claiming that "for jurisdictional purposes the injustice element is irrelevant"); *see*
23 *Fleites* Reply 17-18). Plaintiffs have made no effort to show that they cannot be made
24 whole through Freesites and 9219, both of which do not dispute personal jurisdiction
25 as to the U.S. Plaintiffs' claims. *See Fleites* Reply 18. And Plaintiffs' claim that the

26
27 ⁹ Unlike in *Fleites*, the alter-ego question is not dispositive of the instant jurisdictional
28 analysis, since here all Defendants object to this Court's personal jurisdiction over
the claims of the non-U.S. Plaintiffs.

1 corporate structure is designed to “dispute which entities are legally liable for the
2 harm caused” is belied by the plain fact that MindGeek has consistently maintained
3 for years that Freesites is responsible for operating Pornhub (and Plaintiffs’ counsel
4 has not found anything to the contrary in over a year of discovery). *See, e.g.*, Decl.
5 of Andreas Alkiviades Andreou ¶ 9, *Fleites* ECF No. 70-2 (declaring in October 2021
6 that “MG Freesites Ltd is responsible for operating certain websites, referred to as
7 ‘tubesites,’ including ‘PornHub’”). Thus, unlike the cases on which Plaintiffs rely,
8 there simply has been no “confus[ion]” created by MindGeek. *See, e.g.*, *Elizabeth*
9 *Arden, Inc. v. Merch. of Tennis, Inc.*, 2011 WL 13217803, at *3 (C.D. Cal. Oct. 28,
10 2011) (Plaintiffs’ unrebuted allegations included allegations that the defendants
11 “purposefully blur the corporate distinctions . . . in order to mislead or confuse
12 creditors and customers” and “so they can dispute which entity is legally liable to a
13 particular creditor”).

14 **C. MindGeek USA’s and MG Global’s Prior Headquarters in
15 California Do Not Allow the Exercise of Personal Jurisdiction Over
the State-Law Claims Here.**

16 If the Court dismisses the federal-law claims, then there is no personal
17 jurisdiction over MindGeek USA or MG Global as to any Plaintiff’s claims.

18 **1. There is no general personal jurisdiction.**

19 Though MindGeek USA and MG Global were domiciled in California before
20 Plaintiffs’ complaints were filed, “[c]ourts have uniformly held that *general*
21 jurisdiction is to be determined no earlier than the time of filing of the complaint.”
22 *Baton v. Ledger SAS*, 2021 WL 5226315, at *4 (N.D. Cal. Nov. 9, 2021), *overruled*
23 *on other grounds*, 2022 WL 17352192 (9th Cir. Dec. 1, 2022). General personal
24 jurisdiction arises by virtue of a state’s “power to hale before its courts any individual
25 who could be found within its borders” and “properly serv[ed]” while there. *Burnham*
26 *v. Superior Ct.*, 495 U.S. 604, 611 (1990) (plurality op.); *see J. McIntyre Mach., Ltd.*
27 *v. Nicastro*, 564 U.S. 873, 880 (2011) (plurality op.) (explaining that general
28

1 jurisdiction is created by “[p]resence within a State at the time suit commences
2 through service of process”). And a corporation’s “continuous and systematic general
3 business contacts . . . approximate physical presence in the forum state.”
4 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004)
5 (cleaned up). Thus, the question is whether MindGeek USA and MG Global were
6 ‘physically present’ in California “at the time suit commences.” *Nicastro*, 564 U.S.
7 at 880 (plurality op.).

8 Consistent with that reasoning, California courts have repeatedly rejected the
9 exercise of general personal jurisdiction based on a defendant’s domicile here prior
10 to the filing of the complaint. *See, e.g., Diamondback DTNM, LLC v. ShiftPixy, Inc.*,
11 2024 WL 5185667, at *7 (C.D. Cal. Sep. 27, 2024) (rejecting exercise of general
12 personal jurisdiction based on defendant’s prior residence in California
13 approximately three years before complaint was filed); *Quan v. BAM Trading Servs., Inc.*,
14 2024 WL 2137631, at *2 (N.D. Cal. May 13, 2024) (no general jurisdiction over
15 defendant that moved its principal place of business from California to Florida six
16 months before the complaint was filed); *Baton*, 2021 WL 5226315, at *4 (no general
17 jurisdiction where defendant moved its offices from California to Canada before the
18 complaint was filed).

19 Plaintiffs cite no binding precedent supporting their theory of lookback general
20 personal jurisdiction based purely on a prior principal place of business in the forum.
21 Instead, Plaintiffs rely on the proposition that the Supreme Court has looked back to
22 determine whether an entity has such “continuous and systematic” contacts with the
23 forum—which, by definition, must occur for more than a single day—“as to render
24 it essentially at home” there at the time of the suit. *See Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 271 (2017); *see, e.g., Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952) (corporation’s president was carrying on, prior to and “at the time he was served with summons,” systematic and continuous

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1 activities in Ohio). “This calculus, however, cannot rely on a defendant’s past
2 domicile.” *Cochran v. Air & Liquid Sys. Corp.*, 2022 WL 7609937, at *6 (C.D. Cal.
3 Oct. 13, 2022). And Plaintiffs offer no facts even approaching the “exacting
4 standard” for establishing general personal jurisdiction in a location other than the
5 “paradigmatic locations” of the corporation’s place of incorporation and principal
6 place of business at the time of the suit—an option that the Supreme Court has
7 cautioned is available only in “exceptional case[s].” *BNSF Ry. v. Tyrrell*, 581 U.S.
8 402, 413 (2017) (no general jurisdiction even where defendant had “2,061 miles of
9 railroad track in Montana,” “employ[ed] some 2,100 workers there,” and generated
10 10% of its revenue in the state); *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1069 (9th Cir.
11 2015) (no general jurisdiction where 20 to 27 employees worked in the forum state).

12 **2. There is no specific personal jurisdiction.**

13 Plaintiffs’ resorts to the prospect of specific personal jurisdiction fare no better.
14 To meet their burden of demonstrating this Court’s specific personal jurisdiction,
15 Plaintiffs must show not only that MindGeek USA and MG Global purposefully
16 availed themselves of the laws of California, but also that those jurisdictional contacts
17 relate to their claims. *See Yamashita*, 62 F.4th at 504, 506. “[R]elate to” ‘does not
18 mean anything goes.’” *Id.* Each Plaintiff instead must show how Defendants’
19 activities give rise to *her* claims or are “close[ly] connect[ed]” to her injury. *Id.*

20 Plaintiffs fail to meet that burden. Plaintiffs merely allege that MindGeek USA
21 and MG Global each had an office in California, and they rely on MindGeek’s
22 statements that MG Global has two employees who work on the Trust and Safety
23 teams of the MindGeek tubesites, but who have no responsibility for moderation of
24 content before it is uploaded to the tubesites. *See* Opp. 77-78; Andreou Decl. ¶ 46.
25 As for maintaining a California office, even if it constituted purposeful availment,
26 Plaintiffs have made no effort to show how that office relates to Plaintiffs’ claims.
27 Random jurisdictional contacts amounting to purposeful availment but without any
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1 link to a plaintiff's claims do *not* support the exercise of specific personal jurisdiction.
2 *See, e.g., Bristol-Myers Squibb*, 582 U.S. at 262 (“Nor is it sufficient—or even
3 relevant—that [defendant] conducted research in California on matters unrelated to
4 [the product at issue]. What is needed—and what is missing here—is a connection
5 between the forum and the specific claims at issue.”); *Yamashita*, 62 F.4th at 506
6 (shipment of some batteries into the port of Honolulu constituted purposeful
7 availment, but it could not support the exercise of specific personal jurisdiction over
8 a claim related to different batteries not alleged to be imported into Hawaii).

9 As for the business of MindGeek USA and MG Global, Plaintiffs have not
10 rebutted the fact that neither operates Pornhub or any other tubesite. MindGeek USA
11 is involved in DVD-based content and e-commerce stores, which Plaintiffs do not
12 even attempt to relate to their claims. *See Andreou Decl.* ¶ 37.¹⁰ MG Global provides
13 support services for the tubesites, but Plaintiffs have failed again to draw any link
14 between those support services, including post-publication moderation services by
15 two employees, and their claims. Plaintiffs effectively admit as much, since they
16 request yet even more discovery to assess the veracity of these specific claims, Opp.
17 78, notwithstanding the troves of discovery their counsel obtained in *Fleites*.
18 Plaintiffs have failed to meet their burden of demonstrating any connection between
19 MindGeek USA and MG Global’s California-based activities and their claims. This
20 Court thus lacks personal jurisdiction over those claims if the federal-law claims are
21 dismissed (as they should be). *See Op. Br.* 37.

22 *Square 1 Bank*, the only case cited by Plaintiffs in support of their argument,
23 is not on point. *Square 1 Bank v. Lo*, 128 F. Supp. 3d 1257 (N.D. Cal. 2015). There,
24 the court found specific personal jurisdiction over a former California resident who

25 _____
26 ¹⁰ Plaintiffs allege that MindGeek USA “provided support services to Pornhub,” but
27 MindGeek specifically denied that allegation, and so Plaintiffs cannot rely on it. *See Andreou Decl.* ¶ 37; *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1207 (9th Cir. 2020) (“[D]isputed allegations in the complaint that are not supported with evidence or affidavits cannot establish jurisdiction.”).
28

1 moved out of state the day after the complaint was filed but before she was served
2 with the summons. *See id.* at 1261-62. The case involved allegations of fraudulent
3 transfer of property in California to defraud the plaintiff bank on a loan it issued to
4 the defendant's company while she was a California resident. *See id.* at 1259-61. The
5 court therefore unsurprisingly found that the defendant had sufficient contacts in
6 California related to the suit, since the property allegedly fraudulently transferred was
7 located in California and was transferred while the defendant was still a California
8 resident. *See id.* at 1262-63.

9 **D. The Non-U.S. Plaintiffs' Claims Have No Relation to the
10 Defendants' Forum-Based Contacts.**

11 To establish personal jurisdiction in the United States or California over their
12 claims, the Non-U.S. Plaintiffs must allege sufficient facts showing that each
13 Defendant's jurisdictional contacts gave rise to their claims, and that each Defendant
14 committed an intentional act "expressly aimed at the forum state . . . causing harm
15 that [it] knows is likely to be suffered in the forum state." *AMA Multimedia*, 970 F.3d
16 at 1209. The Non-U.S. Plaintiffs cannot satisfy their burden as to any defendant,
17 including those entities that have operated or provided services for Pornhub,
18 Freesites, 9219, and MG Premium.¹¹ Instead, they ask this Court to exercise personal
19 jurisdiction over claims against Canadian and Cypriot entities, based on actions they
20 allege were taken in Canada and Cyprus, that allegedly injured residents not of
21 California or the United States, but of Colombia, Thailand, and the United Kingdom,
22 based on a globally accessible website. That is not consistent with due process.

23 First, the Non-U.S. Plaintiffs do not allege any intentional act by any entity
24 involved in operating Pornhub that is expressly aimed at, and knowingly caused harm
25 to, the Non-U.S. Plaintiffs in the United States. Ninth Circuit law is clear that merely

26 ¹¹ As set forth above, MindGeek S.à r.l. has no contacts with the United States and
27 thus there is no jurisdiction as to any Plaintiff's claims, and if the federal-law claims
28 are dismissed (they should be), then there is no jurisdiction over MindGeek USA or
MG Global as to any Plaintiff's claims either. *See supra* 22-24, 26.

1 operating a globally accessible website that also happens to be accessible in the forum
2 is not enough to meet this burden. *See WebGroup Czech*, 93 F.4th at 452-53; *AMA*
3 *Multimedia*, 970 F.3d at 1209-10. There must be “something more—conduct directly
4 targeting the forum.” *AMA Multimedia*, 970 F.3d at 1210.

5 The Non-U.S. Plaintiffs have not alleged that “something more.” Instead, they
6 allege that Pornhub profited from the U.S. market. Opp. 79. But the fact that a website
7 “with national viewership and scope appeals to, and profits from, an audience in a
8 particular [forum]” is not enough, as *AMA Multimedia*, a case to which Plaintiffs fail
9 to respond (*see* Op. Br. 39), makes clear. 970 F.3d at 1211 (although 20% of the
10 defendant’s website’s traffic came from U.S. users, that did “not establish that Wanat
11 expressly aimed at the U.S. market”). They allege that Pornhub “targeted advertising
12 directed at United States-based citizens and California residents[,] . . . sold customer
13 data it collected on those visiting its sites, and also sold its Pornhub Premium service
14 to United States residents and California[.]” Opp. 79. But they do not allege that these
15 activities are directed specifically at U.S. users, rather than users generally. And geo-
16 located advertisements do not constitute express aiming because, otherwise, website
17 operators “could be said to expressly aim at *any* forum in which a user views the
18 website.” *AMA Multimedia*, 970 F.3d at 1211 (emphasis in original). Plaintiffs must
19 instead allege facts showing a “differential aiming at the U.S. market.” *WebGroup*
20 *Czech*, 93 F.4th at 456 n.7; *see id.* at 455 (noting that the plaintiff’s failure to clarify
21 whether the advertising involved a differential targeting of the U.S. market meant
22 that the advertisements could not support a finding of express aiming).

23 Plaintiffs’ cited cases make clear why their allegations fail to aver express
24 aiming here. In *WebGroup Czech*, the Ninth Circuit’s finding of express aiming
25 hinged on the fact that the defendant contracted with U.S-based content-delivery
26 network services “for the conceded purpose of . . . improv[ing] the viewing
27 experience of persons near those CDNs” in the United States. *Id.* at 453, 455-56.
28

1 Similarly, the court in *Will Co.* found express aiming because the defendant
2 purchased server-and content-delivery network services in the United States “to have
3 the site load faster for viewers in the United States” and hosted content that was
4 “relevant almost exclusively to viewers in the United States.” 47 F.4th at 925. And
5 in *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 982 (9th Cir. 2021), the court held
6 that the defendant had gone beyond merely placing its products into the stream of
7 commerce because it “contract[ed] with a distribution center in the United States”
8 that “could help [it] better serve the American market and grow its American
9 contacts.” In each case, specific differential treatment of the U.S. market meant that
10 the injury in the United States was foreseeable. *See, e.g., WebGroup Czech*, 93 F.4th
11 at 457 (concluding that harm to a U.S. resident in the United States “was clearly
12 foreseeable, given . . . [defendants’] targeting of the U.S. market”).

13 Here, Plaintiffs have alleged no similar express aiming, and thus no
14 foreseeable harm caused in the United States to the Non-U.S. Plaintiffs. Although the
15 Non-U.S. Plaintiffs claim that MindGeek “hosted [CSAM] on U.S. servers,”
16 MindGeek did not, as it has made clear. Opp. 80. “[REDACTED]

17 [REDACTED].” Andreou
18 Decl. ¶ 12. Plaintiffs’ supposedly contrary evidence refers not to hosting of material,
19 but to [REDACTED]

20 [REDACTED]—which is not the same as hosting content. *See* Opp. 40; Hille Decl.
21 Ex. A, § 7.01(w). Plaintiffs do not allege or explain how storing those backup
22 materials on U.S.-based servers differentially “improve[s] the viewing experience”
23 of U.S. residents. *See WebGroup Czech*, 93 F.4th at 453. And in any event, the mere
24 use of U.S.-based servers (as opposed to content-delivery network services) is, by
25 itself, insufficient to find express aiming. *See, e.g., Hungerstation LLC v. Fast Choice*
26 *LLC*, 857 F. App’x 349, 351 (9th Cir. 2021) (“[N]o authority supports the proposition
27 that the act of using a third-party company’s server in the United States to host

28

1 illegally-obtained information, without more, is sufficient to convey personal
2 jurisdiction.”).

3 Nor have the Non-U.S. Plaintiffs adequately alleged that any U.S.-based
4 activity gave rise to their claims.¹² To start, Plaintiffs’ entire alter-ego theory centers
5 on the proposition that the MindGeek enterprise is a “byzantine international
6 structure of shell companies” that serves no legitimate purpose; instead, the entire
7 enterprise is allegedly run by MindGeek Canada, which comprised “virtually all [of]
8 MindGeek’s employees and provided all of its senior executive management and core
9 corporate functions.” Opp. 1; *Fleites* Opp. 80. Thus, Plaintiffs’ own theory is that the
10 activities giving rise to their claim occurred in Canada and Cyprus, not the United
11 States.¹³ Moreover, the Non-U.S. Plaintiffs hinge their jurisdictional theory on the
12 fact that MindGeek allegedly “hosted [CSAM] on U.S. servers”—but it did not host
13 images here. Opp. 80. Plaintiffs have not alleged or explained how the backup copies
14 of the images at issue give rise to the “transfer, offering, advertisement, distribution,
15 and monetization” of those images. *See* Opp. 79.

16 In sum, the Non-U.S. Plaintiffs have alleged no connection between the United
17 States and images or videos depicting Colombian, British, and Thai plaintiffs on a
18 globally accessible and European-hosted website run by a Cypriot company. No
19 personal jurisdiction therefore has been established.

20 **E. Plaintiffs Are Not Entitled to More Jurisdictional Discovery.**

21 Finally, Plaintiffs’ request for further jurisdictional discovery should be
22 denied. Plaintiffs had access to all the discovery in *Fleites* when opposing
23 MindGeek’s motion to dismiss. *See* Opp. 3. They could have relied on that evidence
24

25 ¹² On this point, *WebGroup Czech* is also inapt for the separate reason that it found
jurisdiction over claims brought by a U.S. resident for harm experienced in the United
26 States—not residents of foreign countries. *See id.* at 458.

27 ¹³ As discussed above, Plaintiffs have not drawn any link between the business
conducted by the U.S.-based MindGeek entities and their claims. *See supra* 29.
28

1 to support their disputed jurisdictional allegations. Instead, that jurisdictional
2 discovery disproved Plaintiffs' theory. Plaintiffs are not entitled to yet another year
3 of scorched-earth jurisdictional discovery based on "little more than a hunch" after
4 the first round turned up dry. *See Yamashita*, 62 F.4th at 508; *Carroll Shelby*
5 *Licensing v. Halicki*, 2021 WL 4895736, at *5 (C.D. Cal. Apr. 15, 2021)
6 (jurisdictional discovery not warranted due in part to "earlier litigation enabling
7 extensive discovery"). Plaintiffs' counsel had the opportunity to, and indeed did, seek
8 jurisdictional discovery relevant to entities that did not object to discovery in *Fleites*.
9 *See, e.g., Fleites v. MindGeek S.A.R.L.*, 2022 WL 18397365, at *2-3 (C.D. Cal. Nov.
10 17, 2022) (granting jurisdictional discovery concerning 9219, which did not object
11 to jurisdiction, because the Court's order "states that Plaintiff may 'impute the
12 contacts of the non-objecting MindGeek Entity Defendants to MindGeek S.A.R.L.
13 and MG Premium through the alter ego doctrine'"). There is thus no reason to reopen
14 jurisdictional discovery into MindGeek USA or MG Global. Nor can Plaintiffs revive
15 jurisdictional discovery based on claims of undisclosed evidence that they never
16 moved to compel. *Fleites* Reply 13. Plaintiffs have offered nothing beyond "bare
17 allegations" to suggest that further jurisdictional discovery would be anything more
18 than a "fishing expedition." *Yamashita*, 62 F.4th at 508; *LNS Enters. v. Cont'l*
19 *Motors, Inc.*, 22 F.4th 852, 864-65 (9th Cir. 2022) Their request should therefore be
20 denied.

21 **V. MINDGEEK S.À R.L. IS BEYOND THE TERRITORIAL REACH OF
22 THE TVPRA**

23 Despite the length of their arguments about the extraterritorial reach of the
24 TVPRA, Opp. 33-39, Plaintiffs fail to meaningfully address MindGeek S.à r.l.'s key
25 point of rebuttal: that MindGeek S.à r.l. is *not* a U.S. national, a lawfully admitted
26 alien, or otherwise "present in" the United States. Mot. 36. These are threshold
27 requirements for extraterritorial application of the TVPRA under 18 U.S.C.
28 1596(a)—which provides that there is extraterritorial jurisdiction over any alleged

1 violation only “if” the alleged offender is a U.S. national, lawfully admitted alien, or
2 otherwise present in the U.S.—and Plaintiffs cannot surpass this threshold.
3 MindGeek S.à r.l. is a private holding company incorporated under the laws of
4 Luxembourg. It does not have employees or operations in the United States. Mot. 36;
5 *Fleites* Reply 20. As a consequence of these facts, MindGeek S.à r.l. cannot be said
6 to be present in the United States, despite Plaintiffs, self-serving conclusion that they
7 have shown MindGeek S.à r.l.’s presence “in spades.” Opp. 36-37.

8 Plaintiffs’ protracted analysis of the legislative history of RICO (which is
9 irrelevant) and the TVPRA cannot save them from this failing. As was the case in the
10 *Fleites* Opposition, Plaintiffs have failed to point to a single case where the TVPRA
11 was applied not just to extraterritorial *conduct* but to an extraterritorial *defendant* who
12 was not a U.S. national, lawful alien, or otherwise present in the United States.
13 Tellingly, *both* of the cases on which Plaintiffs most heavily rely for their
14 extraterritorial-application argument, Opp. 35, involve defendants who were United
15 States government personnel—a fact that the D.C. District Court referred to as of
16 “key importance” in its finding of extraterritorial application, and which is far from
17 the case here. *United States ex rel. Hawkins v. Mantech Int’l Corp.*, 2024 WL
18 4332117, at *12 (D.D.C. Sep. 27, 2024) (“As in the *Roe* case, where it was of key
19 importance to the ruling that the illegal acts were perpetrated by U.S. embassy
20 personnel, the instant lawsuit also involves what is essentially an extension of the
21 United States government abroad. Indeed, Congress explicitly stated its intention in
22 section 3271 that the TVPRA would cover government contractors operating beyond
23 our shores in 18 U.S.C. § 3271(a).”). This Court should not countenance Plaintiffs’
24 attempt to sweep MindGeek S.à r.l. into the statute’s reach.

25 **CONCLUSION**

26 For all of the foregoing reasons, the Court should dismiss with prejudice the
27 entirety of Plaintiffs’ complaints.
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2
3 Dated: January 8, 2025

Respectfully submitted,

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7
8

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9
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11 MindGeek, S.à r.l., MG Freesites Ltd, MG
12 Premium Ltd, MindGeek USA Incorporated,
13 MG Global Entertainment Inc., and 9219-
14 1568 Quebec Inc.
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CERTIFICATE OF COMPLIANCE

2 The undersigned, counsel of record for Defendants MindGeek, S.à r.l.
3 (specially appearing), MG Freesites Ltd, MG Premium Ltd, MindGeek USA
4 Incorporated, MG Global Entertainment Inc., and 9219-1568 Quebec Inc., certifies
5 that this brief contains 20 pages, which complies with the 35-page limit set in the
6 Court's Order Granting Joint Stipulation to Request Limited Coordination For
7 Purposes of Responding to Complaints in Related Cases dated October 9, 2024 (ECF
8 No. 54).

9 | Dated: January 8, 2025

Respectfully submitted,

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